

DuPont Legal

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Dockets Management System
U.S. Department of Transportation
Room PL-401
400 Seventh Street, SW
Washington, D.C. 20590-0001

Dear Sir:

Docket No. RSPA - 2002-13658
(HM215E)

E.I. DuPont de Nemours and Company (DuPont), a Global Science and Technology Company engaged in the manufacture, sale and distribution of chemicals, crop protection products, paints, textiles, resins, plastics and related materials, appreciates the opportunity to submit comments with regard to HM-215E, a Notice of Proposed Rulemaking (NPR).

DuPont is vitally interested in and fully supports the Research and Special Programs Administration (RSPA) and the Department of Transportation (DOT) efforts to maintain alignment with international standards for the preparation and shipment of dangerous goods (hazardous materials) within the commerce of the United States and in the global community. The company also agrees that recent changes in the International Maritime Dangerous Goods Code (IMDG), the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods (ICAO Technical Instructions) and the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations) requires that the United States Hazardous Materials Regulations (HMR) be altered to reflect these international rule changes.

DuPont is aware that the Dangerous Goods Advisory Council (DGAC), The American Chemistry Council (ACC) and other related United States trade Associations have reviewed the NPR and will offer comments to the RSPA on its content and direction. DuPont endorses the comments offered by the DGAC and ACC.

DuPont would also like to offer its own specific comments. These comments included as follows.

By Sections:

172.202 (a) (2)...

Proposed alterations to section 172.202(a)(2) will require shippers and others who prepare shipping papers containing hazardous materials/dangerous goods product descriptions to include in those descriptions the subsidiary class or division number associated with a subsidiary hazard of the goods being described and shipped. DuPont fully supports this change and believes that its inclusion will enhance the safety of the offering for the carriers and emergency responders. DuPont would note, however, that the change is not without cost as additional training and systems work will be required. DuPont recommends a minimum two year transition period be allowed to implement this change after it becomes effective in a final rulemaking.

172.202(b)...

The RSPA proposes to change section 172.202(b) of Title 49 of the United States Code of Federal Regulations (as corrected in the January 8, 2003 Federal Register (68 FR 1013)) to permit an alternative sequence for the hazardous materials (dangerous goods) basic description as the same appears on required international and domestic shipping papers. This change will permit dangerous goods to be listed and shown on shipping papers with either the proper shipping name or the United Nations identification number appearing first in the sequence.

This change will require that preparers of shipping papers, enforcement officials and emergency responders to be retrained to react to either sequence. Further, the complex computer systems used in today's global supply chain will have to be altered to reflect these changes. Systems changes are expensive when you consider all of the resources needed to reconfigure the integrated functionality and system's interfaces. In addition, DuPont and other similarly situated, global shippers will need substantial time and resources to perform the required validation testing prior to going online.

DuPont appreciates the efforts of RSPA in recognizing and permitting both the United States and "International" approaches to the creation of shipping papers to exist and be utilized. However, ultimately, the company believes that one global shipping paper sequence should be used to reduce confusion, enhance emergency response and safety, and reduce the costs associated with the movement of dangerous goods within the United States and around the world. To accomplish this goal, DuPont would urge the RSPA and DOT to settle on one of the two alternatives and, after an appropriate transition period of at least two years, mandate only one shipping paper sequence will be authorized.

DuPont would also urge the RSPA and the DOT to be mindful of the significant systems and training costs associated with rule changes such as is involved with altering the sequence of the dangerous goods description on shipping papers, and the proposed change regarding the subsidiary hazard classes entry on shipping papers noted in 172.202(a)(2). The "safety benefits" of these changes should be weighed against the total implementation costs and only those which truly enhance safety should be implemented. Further, these changes should be done collectively so as to reduce the adverse impact on training and costs associated with implementing each such change separately.

DuPont would also request that the RSPA and the United States Coast Guard members to the United States delegations carry and espouse this message to the international governing organizations (UN, ICAO and IMO). The United States delegations should impress these organizations with the need to recognize and fully consider and weigh the costs and adverse impact on training and safety caused by frequent changes to their regulatory systems with the desired safety improvement.

DuPont is not opposed to changes in regulations that improve s the safety of the transportation of hazardous materials. Quite the contrary. The company embraces changes that enhance safety. However, these changes must be weighed against the costs and adverse impact caused by constant retraining of those impacted by them. A proper balance that maximizes the benefits derived from the expenditure of all safety resources within the world's logistics supply chain community must be our collective goal.

172.202(a)(5)...

Similarly, the change proposed in section 172.202(a)(5) which requires the inclusion of the number and description of packages containing hazardous materials/dangerous goods on shipping papers should enhance safety and assist emergency responders to do their necessary work. DuPont endorses this change and believes it should be implemented.

172.323(a)...

The "air eligibility mark" described and detailed in the changes set forth in section 172.323 (a) will, in DuPont's judgement, cause confusion and may result in improper shipment of cargo not intended for shipment by air. The current language reads as follows:

"(a) Air eligibility marking. Except as otherwise specified in this subchapter, each person who offers for transportation or transports by aircraft a hazardous material in a non-bulk package, including packages used for consumer commodities and limited quantities of hazardous materials, must mark the package to indicate that it meets applicable requirements for air transport. The marking is a certification that the person offering the package into transportation has determined that it complies with the requirements of this subchapter."

The commentary offered in support of this revision indicates that the RSPA anticipates that the "air eligibility mark" may be pre-printed on boxes that are properly designed and tested for use in air service. DuPont is concerned about the potential for carrier employees observing the "air eligibility mark" of placing packages tendered to air and road carriers (UPS< Fed Ex, etc.) for road carriage only inadvertently being placed on an aircraft without regard to shipping paper instructions. The presence of such a mark on pre-printed boxes enhances the potential for this mistake to occur.

Further, DuPont believes that the DOT use of this mark as an additional "certification" is also misguided. The certification on the shipping papers should be sufficient. Shippers utilizing a pre-printed box with instructions on accompanying shipping papers that the package is to be carried by ground do not intend and, DuPont would suggest, do not certify the package as being "air worthy". Rather, DuPont believes that the presence of the mark should indicate only that the package is capable of being used for air transport when the accompanying shipping papers specify that the completed package is to be used (and is certified) for that purpose.

Alternatively, if the mark will be interpreted and, by regulation, will serve as a certification, DuPont does not believe that the mark should be permitted to be pre-printed on the package. Since this is a much more expensive alternative, DuPont believes that the preferred course of action, if the mark is to be used, is to recognize that the mark only certifies that the package is appropriate for use for air carriage when supplemented by the certification appearing in the accompanying and authorizing shipping papers.

Finally, the RSPA proposal regarding the air eligibility mark differs from that of ICAO/IATA. For example, IATA (5.0.2.15) states ...the relevant packing instruction requirements, pressure differential test, requirements to provide absorbent material and closure requirements. Whereas the RSPA NPRM states "The marking is a certification that the person offering the package into transportation has determined that it complies with the requirements of this subpart" (a much broader view). Except where safety considerations otherwise dictate the contrary, the RSPA should narrow its focus to coincide with the IATA/ICAO requirements

172.315...

The proposed changes to the marking requirements for limited quantity packages which substitute the hazardous materials/dangerous goods identification number within a diamond for the shipping name is also acceptable. The smaller space required for the UN number may provide added clarity and reduce confusion that might otherwise hinder the emergency responder in initiating his or her response to an emergency need.

Generally, DuPont concurs with most of the changes and harmonization efforts suggested in HM-215E. However, DuPont is also very concerned that the costs associated with these changes - and others in the future - be fully weighed against the increase (if any) in safety associated with them. Change for change's sake alone - without adequate concern for cost and training required to implement them - is becoming an increasingly significant concern.

Very truly yours,

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